GEORGE BRENNAN, Jr.

IBLA 70-107 Decided September 22, 1970

Coal Prospecting Permits

A charge of official discrimination against an applicant for coal prospecting permits, based upon an allegation that other lands known to be valuable for coal have been awarded to certain other permit applicants in the past, is not a proper basis for issuing this applicant coal prospecting permits for lands known to contain workable coal deposits.

1 IBLA 4

IBLA 70-107	:	W-11709, etc.
GEORGE BRENNAN, Jr.	:	Coal Prospecting Permit
	:	Decision Affirmed

APPEAL FROM WYOMING LAND OFFICE
BUREAU OF LAND MANAGEMENT

George Brennan, Jr., filed three applications for coal prospecting permits covering certain lands in Wyoming. 1/ The Cheyenne Land Office decision of February 13, 1969, rejected all three applications for the reason that the Geological Survey had reported that the lands applied for were known to contain valuable deposits of coal of minable quality and quantity, so that the lands were subject to disposition under the leasing rather than the prospecting provisions of the Mineral Leasing Act.

Upon Mr. Brennan's appeal to the Director, Bureau of Land Management, the land office decision was affirmed on September 30, 1969, by the decision of the Chief, Branch of Mineral Appeals. In the course of that adjudication a supplemental report by the Geological Survey was obtained which reconfirmed the presence of minable coal on the lands applied for. The report, quoted in detail in the decision below, describes Coal Bed 65, situated on the applied-for land, as being lenticular, in that it thins from 11 feet 2 inches to 4 feet 3 inches over a distance of about five miles. The report declares that even the narrower dimension is considered to be of workable thickness. Accordingly, the Bureau of Land Management decision held that the land office had properly rejected appellant's application for prospecting permits. It also incorporated a finding that the land office action was not discriminatory, arbitrary or capricious, as alleged by appellant.

In the instant appeal from that decision, appellant has limited his allegations to the issue of discrimination directed against him. He asserts that coal prospecting permits in the area have been freely obtainable by other parties. In support of this allegation he has submitted a list of examples in which applicants allegedly have received prospecting permits, and, in some cases, subsequently obtained preference right leases for lands shown by Geological Survey publications to contain known coal deposits. Of the eleven examples listed, seven are dated from 1956 to 1963, and no

1/ BLM serial numbers W-11709, W-11710, W-11711.

dates have been given for the remaining four. These examples do not indicate discrimination against the appellant, nor do they show any contemporary discrimination in favor of competing applicants. The broadest inference which can be drawn from a perusal of these examples is that during a period from seven to fourteen years ago several applicants received prospecting permits and leases which perhaps should not have been allowed. No investigation of those cases has been conducted for the purpose of this adjudication, as those cases are not relevant to the controlling issue in this appeal; i.e. whether prospecting or exploratory work is necessary to determine the existence or workability of coal deposits on the land applied for, as required by the Mineral Leasing Act, the only basis on which the Secretary is authorized to grant a prospecting permit. Act of February 25, 1920, 41 Stat. 438; 30 U.S.C. 201(b). Even if appellant was able to demonstrate conclusively that prospecting permits were wrongly issued in the past, this would not militate in favor of re-enacting the wrong in this case.

In addition to the two reports by the Geological Survey alluded to above, we are in receipt of a third report dated July 29, 1970, wherein the Survey states that Energy Development Company 2/ has drilled mine exploration holes in the S1/2 section 8, T. 22 N., R. 82 W., adjacent to the permit application lands, to determine the thickness, quality and continuity of Coal Bed. 65. Coal, 5 to 10 feet thick, was determined to be present in workable quality and quantity and a new mine operation is being considered in the area. The report adds that the coal formations dip toward the north and it is reasonable to believe that coal of workable thickness is present on the permit application lands, and it concludes that the Geological Survey is still of the opinion that the lands are properly classified as subject to disposition under the leasing provisions of the Act, supra.

As pointed out in the decision below, the Department long has used such criteria as proximity to operating mines, location of land in known coal fields, and the character of coal beds in adjacent lands in its adjudication of applications for coal prospecting permits. The Secretary of the Interior has discretionary authority over the issuance of permits to prospect for coal, and in the exercise of this authority may decide, in a given case, that no permit shall be issued. D. E. Jenkins, 55 I.D. 13 (1934). In determining whether lands are of such character as to subject them to leasing rather than prospecting under permits, the Secretary is entitled to rely upon the reports of the Geological Survey. Rowland C. Townsend, A-30142 (Sept. 14, 1965). In the absence of a clear showing that a determination was improperly made, the Secretary will not disturb a mineral classification or determination made by the Geological Survey. Cf. Lillie May Yates, A-26271 (Feb. 8, 1952). There is nothing in the language of the statute which restricts the Secretary, when he reaches an application for action, to a consideration only of information available at the time the application was filed and prevents him from considering subsequent information which

2/ Energy Development Co. acquired coal lease Wyoming 16465 for $35 per acre by competitive bidding.

establishes the existence and workability of coal deposits when the issuance of a permit is considered. Claude B. Heiner, 70 I.D. 149 (1963).
We find that the original classification of the Geological Survey in this case has been sustained and reinforced by the exploration work conducted subsequently on adjacent lands and that no basis exists in the record on which a contrary conclusion might be founded.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 211.13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Edward W. Stuebing, Member

I concur: I concur:

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Francis Mayhue, Member Newton Frishberg, Chairman